In the railroad industry, the Act itself creates a national grievance resolution mechanism in the form of the National Railroad Adjustment Board. 45 U.S.C. § 153. In the airline industry, the Act specifically contemplates the establishment of adjustment boards on a systemwide basis. 45 U.S.C. § 184. The resolution of minor disputes through these national or systemwide procedures creates a uniform industrial order that applies to all employees in a craft or class in whatever state they work.

C. Federal Jurisdiction Is Essential to the Purpose and Structure of the RLA.

Federal jurisdiction to resolve disputes over whether arbitration is required under the RLA protects the integrity of the Act's dispute resolution mechanisms. It precludes courts—both state and federal—from intruding on the adjustment boards' exclusive jurisdiction to resolve all minor disputes that arise in the workplace. As this Court held in applying the doctrine of complete preemption under the National Labor Relations Act: "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law. . . ." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985).[2]

Although this Court has not explicitly stated that the doctrine of complete preemption applies under the RLA, the essence of the doctrine is inherent in the decisions this Court has rendered under the RLA. For instance, in *Central Airlines*, the Court held that federal law governs challenges to the validity or enforceability of a system board of adjust-

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[2] In *Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320 (1972), this Court held that because the RLA's dispute resolution mechanisms are statutorily mandated, "the case for insisting on resort to those remedies is if anything stronger in cases arising under that Act than it is in cases arising under § 301 of the LMRA." *Id.* at 323.

ment's decision issued pursuant to a collective bargaining agreement: "Whether Central must comply with the award or whether, instead, it is impeachable, are questions controlled by federal law. . . ." *Central Airlines*, 372 U.S. at 695. The Court explained that the "validity, interpretation, and enforceability" of agreements creating system board procedures "cannot be left to the laws of the many States." *Id.* at 691. "The needs of the subject matter manifestly call for uniformity." *Id.* at 691-92.

Federal jurisdiction over a claim pled under state law, but which involves the interpretation or application of a collective bargaining agreement and thus constitutes a minor dispute, is consistent with a long line of cases recognizing the strong federal interests inherent in the RLA. *See Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548, 567-68 (1930) (recognizing propriety of federal court action to prevent interference with selection of representatives under the RLA); *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R.R. Co.*, 353 U.S. 30, 39-40 (1957) (recognizing propriety of federal court action to compel compliance with minor dispute resolution procedures); *Chicago & North Western Ry. Co. v. United Transportation Union*, 402 U.S. 570, 582-83 (1971) (recognizing propriety of federal court injunction against strike during major dispute resolution procedures); *Trans World Airlines, Inc. v. Independent Federation of Flight Attendants*, 489 U.S. 426, 432-33 (1989) (applying federal common law concerning reinstatement rights of striking employees under the RLA); *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 76 (1991) (describing union's duty of fair representation as a "duty grounded in federal statutes").

A decision affirming federal jurisdiction under the RLA, under the doctrine of complete preemption or otherwise, would discourage employees with claims subject to the RLA's mandatory grievance arbitration procedures from attempting to bypass those procedures by suing in state court.

II. THE STANDARD APPLIED BY THE COURT BELOW THREATENS THE STABILITY OF LABOR RELATIONS IN THE AIR AND RAIL INDUSTRIES.

By holding that no removal jurisdiction exists to determine whether a dispute is minor (and therefore subject to the RLA's mandatory dispute resolution procedures), the decision of the court below threatens to weaken labor relations stability in the air and rail industries. The standard applied below, as well as by the Third and Eleventh Circuits, disperses the important task of determining what is a "minor dispute" to a multitude of state courts, risking the consistency that is so important to these industries.

Air and rail carriers covered by the Act typically operate in numerous states, and many of their employees in the operating crafts (such as locomotive engineers, pilots, trainmen and flight attendants) perform service throughout the carriers' systems. Class I railroads, for instance, employ 154,652 workers in operations that span 44 states and the District of Columbia. *See* ASSOCIATION OF AMERICAN RAILROADS, RAILROAD FACTS 68-69 (2004). The vast majority of those employees are represented by a union. Air carriers who are members of AIRCON employ well over 500,000 workers and operate in every state except Delaware. *See* BUREAU OF TRANSPORTATION STATISTICS, DEP'T OF TRANSPORTATION, NUMBER OF EMPLOYEES – CERTIFICATED CARRIERS 2004 YEAR END DATA, *available at* http://www.bts.gov/programs/airline_information/number_of_employees/certificated_carriers/html/2004.html.

Lawsuits raising common law or statutory claims potentially subject to preemption under the Act's mandatory and exclusive grievance arbitration procedures will have that critical threshold issue decided by whatever court the litigant chooses. This will encourage forum-shopping and duplicative litigation, and it will spawn efforts to litigate collateral

state law claims rather than submit to the Act's mandatory grievance arbitration procedures. *Cf. Central Airlines*, 372 U.S. at 691 n.15 ("Is the continuity of essential air traffic to be at the plaintiff's choice of forum? What is to happen when several plaintiffs bring several suits in several states? Is effective federal control of an operational activity deemed so essential to national welfare to be precariously dependent upon the accident of diversity of citizenship?" (quoting *International Ass'n of Machinists v. Central Airlines, Inc.*, 295 F.2d 209, 223 (5th Cir. 1961) (Brown, J., dissenting))).

Such a proliferation of litigation would unnecessarily risk inconsistent decisions with respect to the application of the standard for preemption established in *Norris*, inconsistent decisions about the scope of the grievance arbitration procedure, and quite probably decisions that inconsistently interpret or apply the terms of a collective bargaining agreement. The standard applied by the Sixth Circuit (as well as the Third and Eleventh Circuits) will confuse the boundaries between what is a "minor dispute" subject to the grievance procedure and "other disputes" to be resolved in the state courts.

These outcomes are at odds with the structure of the RLA, which seeks to ensure labor peace in two industries at the heart of interstate commerce by establishing a cohesive and highly centralized system of labor dispute resolution. As this Court noted in *Central Airlines*:

> Congress in 1936 could not . . . have thought that stability and continuity to interstate air commerce would come from the undulating policies . . . of the legislatures and courts (or both) of [50] states in the enforcement of anything thought so essential to industrial peace as this system of governmentally compelled arbitration.

Central Airlines, 372 U.S. at 691 n.15 (quoting *International Ass'n of Machinists v. Central Airlines, Inc.*, 295 F.2d 209, 221-22 (5th Cir. 1961) (Brown, J., dissenting)). The same

logic applies with equal force in this case, and with the same implications for industrial peace and stability in both the air and rail industries.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

GRAND TRUNK WESTERN RAILROAD INC.; TRACY MILLER; LAURENCE T. WIZAUER; DAVID CROMIE; PETER BRANDON; THOMAS WILLETT; LAWRENCE R. MARTENIS,

Petitioners,

v.

JAMES T. RODDY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

Whether "Federal Preemption" is a "Federal Question" or merely a defense to a state law cause of action.

Whether the doctrine of "Complete Preemption" should, for the first time be applied by this Court to a "minor dispute" subject to mandatory arbitration under section 3 of the Rail Labor Act 45 U.S.C. § 153.

Whether Respondent's original complaint states a "Federal Question" under the "Well Plead Complaint" doctrine. (*See* App "I")

Whether the Rail Labor Act (RLA) provides "Federal Removal Jurisdiction" for "minor disputes". (*See* 45 U.S.C. § 153)

PARTIES TO THE PROCEEDINGS

The only parties in the court below are those listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Respondent JAMES T. RODDY makes the following disclosure:

1. Said party is not a subsidiary or affiliate of a publicly owned corporation.

2. There is no publicly owned corporation, not a party to the appeal, which has a financial interest in the outcome.

August 19, 2005

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OPPOSITION TO WRIT OF CERTIORARI

Respondent respectfully opposes the granting of a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Petitioner's App. 1a-14a) is reported at 395 F.3d 318 (6th Cir. 2005). Both the district court's order denying respondent's motion to remand (Petitioner's App. 15a), and the transcript containing its bench ruling in support of that order (Petitioner's App. 16a-27a), are unreported, as is the district court's memorandum opinion and order granting petitioners' motion for summary judgment (Petitioner's App. 28a-41a).

JURISDICTION

The judgment of the court of appeals Petitioner seeks to review was entered on January 14, 2005. The U.S. Sixth Circuit Court of Appeals denied a timely petition for rehearing on March 15, 2005. (Petitioner's App. 47a-48a.) Petitioners' requested more time to file a petition for a writ of certiorari. This request was granted by Justice Stevens extending the time for the filing of the petition for writ of certiorari until July 13, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Respondent agrees with Petitioners statement of jurisdiction for this petition, but also agrees with the U.S. Sixth Circuit of the issue of removal jurisdiction (Subject Matter Jurisdiction).

STATUTORY PROVISIONS INVOLVED

This case concerns 28 U.S.C. § 1331 and 28 U.S.C. § 1441, and the Michigan "Elliott-Larsen civil rights act" MCL § 37.2101 et. sec.

INTRODUCTION

This action was commenced in the Shiawassee County Circuit Court for the State of Michigan on June 22, 2002. The cause of action filed contains alleged violations of the Michigan Elliot Larsen Civil Rights act being MCL § 37.2101 *et. seq.* and relief specifically provided for in the Act. On or about July 19th 2002 the Defendant-Appellees-Petitioners ("Petitioners" "GTW") filed an answer to the complaint and filed a Joint Removal to the U.S. District Court for the Eastern District of the Michigan. Plaintiff-Appellant James T. Roddy ("Plaintiff" "Respondent" or "Roddy") appealed the district court's denial of his motion to remand and the district court's subsequent grant of summary judgment in favor of the Defendants-Appellees-Petitioners, Grand Trunk Western Railroad, Inc., Tracy Miller, Lawrence T. Wizauer, David Cromie, Peter Brandon, Thomas Willett and Lawrence Martenis (collectively referred to as "Petitioners", "GTW" or "Defendants").

The U.S. Court of Appeals for the Sixth Circuit reversed the denial of the motion to remand, vacated the entry of summary judgment, and remanded to the district court with instructions to the U.S District Court to enter an order remanding the entire case to state court for lack of removal jurisdiction (Subject Matter Jurisdiction) without reaching the question of whether Roddy's state claim is in fact preempted by Federal Law.